

Combustion Permit by Rule (PBR) GUIDANCE
Department of Environmental Quality (DEQ)
Section II: Methodology

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<p>NOTES: In addition to the general provisions found in Section I (General) of this Guidance, the applicant should follow the specific Methodology suggested in Section II, as provided in the right-hand columns below, as well as those found in all other Guidance sections and attachments to the Guidance.</p> <p>So that readers may have regulatory and Guidance (Methodology) provisions in one document, the entire Combustion PBR Regulation is laid out below in the left-hand column. This approach is being utilized for the convenience of readers and in response to stakeholder requests. The prefix “9 VAC15-70” should be assumed to precede each regulatory subsection number (e.g., 9 VAC 15-70-10, 9 VAC 15-70-20).</p> <p>Where Guidance provisions are deemed helpful or necessary, they are set forth in the right-hand column in proximity to the associated regulatory provisions. A full copy of the Combustion PBR Regulation may also be found at http://lis.virginia.gov/000/reg/TOC09015.HTM#C0040 and at http://www.deq.virginia.gov/Programs/RenewableEnergy/LawsRegulationsGuidance.aspx. Applicants are responsible for complying with all regulatory provisions.</p> <p>DISCLAIMER: This document is provided as Guidance and, as such, sets forth standard operating procedures for the agency. It does not mandate any particular method nor does it prohibit any alternative method. If alternative proposals are made, such proposals should be reviewed and accepted or denied based on their technical adequacy and compliance with appropriate laws and regulations.</p>	
<p>9 VAC 15-70-</p>	
<p>10. Definitions.</p> <p>Definitions.</p> <p>The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:</p> <p>"Applicant" means the owner or operator who submits an application to the department for a permit by rule pursuant to this chapter.</p>	

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<p>“Archive search” means a search of DHR’s cultural resource inventory for the presence of previously recorded archaeological sites and for architectural structures and districts.</p> <p>"Coastal Avian Protection Zones" or "CAPZ" means the areas designated on the map of "Coastal Avian Protection Zones" generated on the department's Coastal GEMS geospatial data system (9VAC15-70-120 C 1).</p>	<p><i>Background: The definition of “archive search” was suggested by DHR. It represents an abbreviated, low- or no-cost survey that can be performed by a non-professional. Unlike the Analysis requirement for combustion projects subject to Part II of this proposed regulation, the archive search does not involve an obligation to discover or analyze as-yet-unidentified historic resources. The archive search may be performed by a lay person; i.e., a DOI-qualified expert is not required to perform the survey. DHR and the other members of the Combustion RAP believed that this requirement was sufficient and appropriate for projects falling within the purview of 9VAC15-70-130 B.</i></p> <p><i>Background: The CAPZ map and related regulatory provisions were originally developed and recommended by the Offshore/Coastal Wind RAP. These concepts were created chiefly by scientists from DGIF and the Center for Conservation Biology for use in DEQ’s renewable energy regulations for projects located in nearshore (i.e., state) waters and on coastal land areas. The Combustion RAP determined that combustion projects cannot be feasibly constructed in state waters, at least for the foreseeable future, that are large enough or of a character to trigger any of the requirements of this proposed Combustion PBR. Accordingly, this proposal contains no definitions or other provisions relating to combustion projects in state waters. The Combustion RAP did believe, however, that combustion projects might be feasibly constructed on coastal land areas, which might include some areas within the CAPZ, and that these projects might pose a risk to avian resources if the built structures exceed 200 feet in height. For this reason, the proposal contains definitions and other provisions applicable to combustion energy projects located in certain CAPZ.</i></p>

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<p>“Combustion energy project,” or “project” means a small renewable energy project that</p> <ul style="list-style-type: none"> i. Is an electrical generation facility with a rated capacity not exceeding 20 megawatts that generates electricity only from biomass, energy from waste, or municipal solid waste; and ii. utilizes a fuel or feedstock which is addressed as a regulated solid waste by 9VAC20-81, 9VAC20-60, or 9VAC20-120; is defined as biomass pursuant to §10.1-1308.1 of the Code of Virginia; or both. <p>“Department” means the Department of Environmental Quality, its director, or the director's designee.</p> <p>“DCR” means the Department of Conservation and Recreation.</p> <p>“DGIF” means the Department of Game and Inland Fisheries.</p> <p>“DHR” means the Department of Historic Resources.</p> <p>“Disturbance zone” means the area within the site directly impacted by construction and operation of the combustion energy project.</p>	<p><i>Subparagraph (i) quotes from the 2009 statute.</i></p> <p><i>Subparagraph (ii) explains that projects that generate electricity from regulated solid wastes or biomass crops are addressed by the PBR regulation. These terms are pegged to DEQ’s regulations or to Virginia statute; consequently, if definitions change within these regulations or statute, then the “Combustion energy project” definition will automatically conform. Applicants should check the cited regulations and statute to ensure that their proposed project is included within the provisions.</i></p>

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<p>"Historic resource" means any prehistoric or historic district, site, building, structure, object, or cultural landscape that is included or meets the criteria necessary for inclusion in the Virginia Landmarks Register pursuant to the authorities of § 10.1-2205 of the Code of Virginia and in accordance with 17VAC5-30-40 through 17VAC5-30-70.</p> <p>"Interconnection point" means the point or points where the combustion energy project connects to a project substation for transmission to the electrical grid.</p> <p>"Natural heritage resource" means the habitat of rare, threatened, or endangered plant and animal species, rare or state significant natural communities or geologic sites, and similar features of scientific interest benefiting the welfare of the citizens of the Commonwealth.</p> <p>"Operator" means the person responsible for the overall operation and management of a combustion energy project.</p> <p>"Owner" means the person who owns all or a portion of a combustion energy project.</p> <p>"Parking lot" means an improved area, usually divided into individual spaces and covered with pavement or gravel, intended for the parking of motor vehicles.</p> <p>"Parasitic load" means the maximum amount of electricity (in megawatts or kilowatts) a combustion energy project uses to run its electricity-producing processes while operating at the rated capacity.</p>	<p><i>Background:</i></p> <p><i>"Parasitic load": RAP members pointed out that, unlike wind and solar projects, combustion energy projects require a certain amount of energy to support the electricity-producing processes. RAP members agreed that it was not appropriate to include this "parasitic load" when calculating the project's rated capacity.</i></p>

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<p>"Permit by rule" means provisions of the regulations stating that a project or activity is deemed to have a permit if it meets the requirements of the provision.</p> <p>"Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other political subdivision of the Commonwealth, any interstate body, or any other legal entity.</p> <p>"Pre-construction" means any time prior to commencing land-clearing operations necessary for the installation of energy-generating structures at the combustion energy project.</p> <p>"Rated capacity" means the maximum designed electrical generation capacity (in megawatts or kilowatts) of a combustion energy project, minus the parasitic load; sometimes known as "net capacity."</p> <p>"Site" means the area encompassed by the combustion energy project, plus appurtenant structures and facilities such as fuel processing, delivery, storage and associated conveyance equipment areas if they (a) are contiguous and (b) primarily exist to supply fuel for the generation of electricity at that project, to the extent that these areas are under common ownership or operating control by the owner or operator of the combustion energy project.</p>	<p><i>Background: The definition of "rated capacity" accounts for subtraction of "parasitic load," as explained above. This definition also reflects the RAP's acknowledgment that DEQ has statutory authority to regulate projects that "generate <u>electricity</u>," but not to projects that generate heat/thermal energy. In calculating the rated capacity of a proposed combustion project, the applicant should subtract parasitic load and any value that pertains to thermal energy.</i></p> <p><i>Site. For some projects addressed by this PBR, there may be fuel storage (wood, manure, etc.) near or connected to the boiler. Under the circumstances cited in the regulation, it is appropriate to include such structures within the "site."</i></p>

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	<p><i>Natural Heritage Resources. If habitat for T&E plants or insects is found on the proposed development site, then the developer consults with VDACS. Pursuant to VDACS' law, landowners and persons acting with the landowner's explicit permission – who could include developers who lease land for wind energy projects – can take any action they deem appropriate on their own land. This proviso to the definition of "wildlife" is designed to prevent the presence of T&E insects from becoming an automatic, mandatory trigger for wildlife mitigation under the proposed regulation. This information was summarized for the Combustion RAP, whose members agreed with this approach.</i></p>

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<p>20. Authority and Applicability</p> <p>A. This regulation is issued under authority of Article 5 (§ 10.1-1197.5 et seq.) of Chapter 11.1 of Title 10.1 of the Code of Virginia. The regulation contains requirements for combustion energy projects that are designed for, or capable of, operation at a rated capacity equal to or less than 20 megawatts.</p> <p>B. The department has determined that a permit by rule is required for combustion energy projects with a rated capacity greater than five (5) megawatts, provided that the projects do not otherwise meet the criteria for Part III (9VAC15-70-130) of this chapter; and this regulation contains the permit by rule provisions for these projects in Part II (9VAC15-70-30 et seq.) of this chapter.</p> <p>C. The department has determined that different provisions should apply to projects that meet the criteria as set forth in Part III (9VAC15-70-130) of this chapter, and this regulation contains the requirements, if any, for these projects in Part III (9VAC15-70-130) of this chapter. Projects that meet the criteria for Part III of this chapter are deemed to be covered by the permit by rule.</p>	<p><i>Background: This section reiterates the statute’s provision that the permit by rule shall apply to combustion projects with a rated capacity of 20 megawatts and smaller. The SCC retains authority over projects larger than 20 megawatts.</i></p> <p><i>B (Part II projects, aka “full PBR” projects): Based on the consensus recommendations of the Combustion RAP, this proposal requires that projects with rated capacity >5 MW and ≤ 20 MW that do not otherwise meet the “de minimis” requirements of Part III should meet the requirements set forth in Part II of the PBR regulation (9VAC15-70-30 et seq.) – which are the 15 statutory criteria.</i></p> <p><i>C.(Part III projects, aka “de minimis” projects): The proposal provides in Part III (9VAC15-70-130 A & B) only minimal or no requirements for projects ≤ 5MW of rated capacity, or >5 MW but meeting specified criteria. Applicants should read Section 130 carefully to determine whether their proposed project qualifies for “de minimis” treatment under the criteria specified.</i></p>

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<p>30. Application</p> <p>A. The owner or operator of a combustion energy project with a rated capacity greater than five (5) megawatts, provided that the project does not otherwise meet the criteria for Part III (9VAC15-70-130) of this chapter, shall submit to the department a complete application, in which he satisfactorily accomplishes all of the following:</p> <p>1. In accordance with § 10.1-1197.6 B 1 of the Code of Virginia, and as early in the project development process as practicable, furnishes to the department a notice of intent, to be published in the Virginia Register, that he intends to submit the necessary documentation for a permit by rule for a small renewable energy project;</p> <p>2. In accordance with § 10.1-1197.6 B 2 of the Code of Virginia, furnishes to the department a certification by the governing body of the locality or localities wherein the small renewable energy project will be</p>	<p>REQUIREMENTS FOR “FULL PBR” PROJECTS:</p> <p><i>This section lists the 15 basic application requirements as set forth in the 2009 statute and as amended in 2017. If a particular requirement warrants detailed explanation, then that explanation is set forth either in this Guidance document, in a subsequent section of the regulation, or in both. For example, the Analyses, Determination of Significant Adverse Impact, and Mitigation requirements in subparagraphs 7 and 8 of this section are spelled out in three subsequent regulatory sections.</i></p> <p><i>Applicants should furnish this notice of intent (NOI) to DEQ as soon as possible, but certainly after the applicant believes that the proposed project can meet local land use requirements (that is, that the proposed project appears capable of meeting the requirements for a special use permit or other locally-designated permission, and not that the project has necessarily been granted a special use permit, etc.). <u>See</u> Section I of this Guidance.</i></p> <p><i>Please refer to the attached Sample Notice of Intent (Full PBR Projects) when drafting the Notice of Intent. The agency prefers that this notice be transmitted by electronic mail to mary.major@deq.virginia.gov.</i></p> <p><i>Further note: The Notice of Intent should be submitted to DEQ significantly prior to submission of the final application package, and the applicant is advised to include a copy of the Notice of Intent (including date originally submitted) in the final application package.</i></p> <p><i>DEQ recommends that local government certification take the form of either a letter on official letterhead stationery from a responsible official of the local government (e.g., county administrator or his designee) or the Local Governing Body Certification Form attached to this Guidance. If the local governing body prefers to write the letter on official letterhead</i></p>

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<p>located that the project complies with all applicable land use ordinances;</p> <p>3. In accordance with § 10.1-1197.6 B 3 of the Code of Virginia, furnishes to the department copies of all interconnection studies undertaken by the regional transmission organization or transmission owner, or both, on behalf of the small renewable energy project;</p> <p>4. In accordance with § 10.1-1197.6 B 4 of the Code of Virginia, furnishes to the department a copy of the final interconnection agreement between the small renewable energy project and the regional transmission organization or transmission owner indicating that the connection of the small renewable energy project will not cause a reliability problem for the system. If the final agreement is not available, the most recent interconnection study shall be sufficient for the purposes of this section. When a final interconnection agreement is complete, it shall be provided to the department. The department shall forward a copy of the agreement or study to the State Corporation Commission;</p> <p>5. In accordance with § 10.1-1197.6 B 5 of the Code of Virginia, furnishes to the department a certification signed by a professional engineer licensed in Virginia that the maximum generation capacity of the combustion energy project, as designed, does not exceed 20 megawatts;</p>	<p><i>stationery, the letter should state that the proposed project (identified by the name of the applicant, the proposed location including project coordinates, and other relevant information) complies with all applicable land use ordinances.</i></p> <p><i>Interconnection: If a project does not interconnect to the electric grid (i.e., it does not sell electricity at wholesale back to the grid), then the applicant will not be able to comply with criteria 3 and 4. Based on informal advice from the Office of the Attorney General (OAG), however, DEQ still has jurisdiction to consider and approve PBR coverage for such projects. (See Section I -General of this Guidance document for further information.) For projects that do not interconnect, the applicant should attach to his final application an explanation that the interconnection criteria are not relevant, in lieu of attaching interconnection studies and the final interconnection agreement.</i></p>

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<p>6. In accordance with § 10.1-1197.6 B 6 of the Code of Virginia, furnishes to the department an analysis of potential environmental impacts of the small renewable energy project's operations on attainment of national ambient air quality standards;</p> <p>7. In accordance with § 10.1-1197.6 B 7 of the Code of Virginia, furnishes to the department, where relevant, an analysis of the beneficial and adverse impacts of the proposed project on natural resources. The owner or operator shall perform the analyses prescribed in 9VAC15-70-40. For wildlife, that analysis shall be based on information on the presence, activity, and migratory behavior of wildlife to be collected at the site for a period of time dictated by the site conditions and biology of the wildlife being studied, not exceeding 12 months;</p> <p>8. In accordance with § 10.1-1197.6 B 8 of the Code of Virginia, furnishes to the department a mitigation plan pursuant to 9VAC15-70-70 that details reasonable actions to be taken by the owner or operator to avoid, minimize, or otherwise mitigate such impacts, and to measure the efficacy of those actions; provided, however, that the provisions of 9VAC15-70-30 A 8 shall only be required if the department determines, pursuant to 9VAC15-70-50, that the information collected pursuant to § 10.1-1197.6 B 7 of the Code of Virginia and 9VAC15-70-40 indicates that significant adverse impacts to wildlife or historic resources are likely;</p>	<p><i>See, Guidance to subsections 40, 50 & 60 below.</i></p>

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<p>9. In accordance with § 10.1-1197.6 B 9 of the Code of Virginia, furnishes to the department a certification signed by a professional engineer licensed in Virginia that the project is designed in accordance with 9VAC15-70-80;</p> <p>10. In accordance with § 10.1-1197.6 B 10 of the Code of Virginia, furnishes to the department an operating plan describing how any standards established in the regulations applicable to the permit by rule will be achieved.</p> <p>11. In accordance with § 10.1-1197.6 B 11 of the Code of Virginia, furnishes to the department a detailed site plan meeting the requirements of 9VAC15-70-70;</p> <p>12. In accordance with § 10.1-1197.6 B 12 of the Code of Virginia, furnishes to the department a certification signed by the applicant that the combustion energy project has applied for or obtained all necessary environmental permits;</p>	<p>10. <i>This provision makes clear that DEQ is concerned only with the aspects of the project’s operating plan that involve implementation of the mitigation plan, if a mitigation plan is required. Enforcing health and safety and other operating-plan issues are not within DEQ’s authority over natural-resource protections, and they are left to the authority of local government and other relevant entities.</i></p> <p>12. <i>Other environmental permits. The applicant’s environmental permit certification letter should state which environmental permits are necessary for the proposed project and the status of the applicant’s application for each (“applied for” or “obtained”). If no environmental permits are necessary for the proposed project, then the applicant should so state in his certification letter. A suggested format for the applicant’s environmental permit certification appears as an attachment to this Guidance.</i></p> <p><u>“Applied for”</u></p> <p><i>For purposes of this regulation, the term “<u>applied for</u>” all necessary environmental permits means that the applicant has submitted an application to the receiving agency for each necessary environmental permit. The applicant should certify that he has “applied for” each permit by providing to DEQ the name of the permit, name and address of the receiving agency, name of the staff person at the receiving agency to</i></p>

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<p>13. In accordance with § 10.1-1197.6 H and I of the Code of Virginia, furnishes to the department a certification signed by the applicant that the small solar energy project is being proposed, developed, constructed, or purchased by a person that is not a utility regulated pursuant to Title 56 of the Code of Virginia or provides certification that (i) the project's costs are not recovered from Virginia jurisdictional customers under base rates, a fuel factor charge, or a rate adjustment clause or (ii) the applicant is a utility aggregation cooperative formed under Article 2 (§ 56-231.38 et seq.) of Chapter 9.1 of Title 56 of the Code of Virginia.</p> <p>14. Prior to authorization of the project and in accordance with §§ 10.1-1197.6 B 13 and 10.1-1197.6 B 14 of the Code of Virginia, conducts a 30-day public review and comment period and holds a public meeting pursuant to 9VAC15-70-90. The public meeting shall be held in the locality or, if the project is located in more than one locality, in a place proximate</p>	<p><i>whom the application was addressed (if available), and the date on which the application was submitted.</i></p> <p><i><u>"Obtained"</u></i></p> <p><i>If the applicant has "<u>obtained</u>" the necessary environmental permits by the time he submits his PBR application, then he may either append copies of these permits or append a letter on agency stationery from the appropriate agency staff member that the permit(s) has been issued and the date of issuance/approval.</i></p> <p><i>The applicant should certify that he is not a utility regulated under Title 56 of the Code of Virginia by submitting the non-utility Certification Form provided below.</i></p> <p><i>If the applicant is a utility, then he should submit the Utility Certification Form and must certify, by checking the appropriate box, that the project's costs are not recovered from Virginia customers under base rates, a fuel factor charge or a rate adjustment clause OR the utility is a cooperative.</i></p> <p><i>It is the responsibility of the applicant to conduct both the public meeting and the 30-day public review and comment period. All the materials that are intended to be submitted in the PBR application must be available during this comment period, except for the summary report of the comment period and permit fee. This public comment is separate from any public meetings conducted to receive local approval - any previous</i></p>

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<p>to the location of the proposed project. Following the public meeting and public comment period, the applicant shall prepare a report summarizing the issues raised by the public and include any written comments received and the applicant's response to those comments. The report shall be provided to the department as part of this application; and</p> <p>15. In accordance with 9VAC15-70-110, furnishes to the department the appropriate fee.</p>	<p><i>public meetings will not substitute for this public comment period.</i></p> <p><i>See 9VAC15-70-110 and Guidance for Section 110 below for details regarding fees.</i></p>
<p>B. Within 90 days of receiving all of the required documents and fees listed in subsection A of this section, the department shall determine, after consultation with other agencies in the Secretariat of Natural Resources, whether the application is complete and whether it adequately meets the requirements of this chapter, pursuant to § 10.1-1197.7 A of the Code of Virginia.</p> <ol style="list-style-type: none"> 1. If the department determines that the application meets the requirements of this chapter, then the department shall notify the applicant in writing that he is authorized to construct and operate a combustion energy project pursuant to this chapter. 2. If the department determines that the application does not meet the requirements of this chapter, then the department shall notify the applicant in writing and specify the deficiencies. 3. If the applicant chooses to correct deficiencies in a previously submitted application, the department shall 	

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<p>follow the procedures of this subsection and notify the applicant whether the revised application meets the requirements of this chapter within 60 days of receiving the revised application.</p> <p>4. Any case decision by the department pursuant to this subsection shall be subject to the process and appeal provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).</p>					
<p>40. Analysis of the beneficial and adverse impacts on natural resources.</p> <p>A. Analyses of wildlife. To fulfill the requirements of § 10.1-1197.6 B 7 of the Code of Virginia, the applicant shall conduct pre-construction wildlife analyses. The analyses of wildlife shall include the following, if the disturbance zone exceeds 10 acres and the project does not meet the criteria of 9VAC15-70-130 B 2 a ii:</p> <p>1. The applicant shall obtain a wildlife report and map generated from DGIF's Virginia Fish and Wildlife Information Service web-based application (9VAC15-70-120 C 3) or from a data and mapping system including the most recent data available from DGIF's subscriber-based Wildlife Environmental Review Map Service of the following: (i) T&E species within the project's disturbance zone; (ii) known wildlife species and habitat features within the project's disturbance zone and within two (2) miles of the boundary of</p>	<p>Desktop Surveys and Maps</p> <p><i>The applicant should provide a report, including a map, of the desktop surveys conducted to determine the existence or potential existence of wildlife. The applicant should obtain a list of wildlife from DGIF and DCR for the proposed site and attach it to the application. The report should provide relevant, available details of any wildlife found onsite, including species, detection location(s), age, size, spatial distribution, and evidence of reproduction.</i></p> <p>Shelf life:</p> <p><i>This list provides a general guideline for how long a negative survey (a survey where <u>no</u> STATE-listed species was found) remains valid.</i></p> <table border="1"> <thead> <tr> <th data-bbox="974 1317 1423 1349"><u>Taxon/Species</u></th> <th data-bbox="1423 1317 1944 1349"><u># of years negative survey valid</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="974 1365 1423 1399"><u>Mammals</u></td> <td data-bbox="1423 1365 1944 1399"></td> </tr> </tbody> </table>	<u>Taxon/Species</u>	<u># of years negative survey valid</u>	<u>Mammals</u>	
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<p>the project's disturbance zone; and (iii) known or potential sea turtle nesting beaches located within one-half (1/2) mile of the disturbance zone.</p>	<table border="0"> <tr> <td><i>All listed bats</i></td> <td>3 years</td> </tr> <tr> <td><i>Other listed mammals</i></td> <td>2 years</td> </tr> <tr> <td colspan="2"><u><i>Birds</i></u></td> </tr> <tr> <td><i>Gull-billed tern (Sterna nilotica)</i></td> <td>1 years</td> </tr> <tr> <td><i>Peregrine falcon (Falco peregrinus)</i></td> <td>1 years</td> </tr> <tr> <td><i>Wilson's plover (Charadrius wilsonia)</i></td> <td>1 years</td> </tr> <tr> <td><i>Bald eagle (Haliaeetus leucocephalus)</i></td> <td>1 years</td> </tr> <tr> <td><i>Other listed birds</i></td> <td>2 years</td> </tr> <tr> <td colspan="2"><u><i>Fish</i></u></td> </tr> <tr> <td><i>All listed fish</i></td> <td>2 years</td> </tr> <tr> <td colspan="2"><u><i>Amphibians</i></u></td> </tr> <tr> <td><i>All listed amphibians</i></td> <td>2 years</td> </tr> <tr> <td colspan="2"><u><i>Reptiles</i></u></td> </tr> <tr> <td><i>All listed reptiles</i></td> <td>2 years</td> </tr> <tr> <td><i>All listed isopods and amphipods</i></td> <td>3 years</td> </tr> <tr> <td><i>All listed mollusks</i></td> <td>2 years</td> </tr> <tr> <td><i>All other listed invertebrates</i></td> <td>2 years</td> </tr> <tr> <td colspan="2">-----</td> </tr> <tr> <td colspan="2"><i>Prepared by DGIF; last updated: November 19, 2010</i></td> </tr> <tr> <td colspan="2"><i>Sensitive Information (wildlife) and FOIA</i></td> </tr> <tr> <td colspan="2"><i>It is important to note that the locations of and specific information regarding caves and certain plant and animal species are considered sensitive and may be exempt from the Virginia Freedom of Information Act. <u>See</u> Section I of this Guidance.</i></td> </tr> <tr> <td colspan="2"> <i>If a proposed project will be located anywhere near a coastal area, the</i></td> </tr> </table>	<i>All listed bats</i>	3 years	<i>Other listed mammals</i>	2 years	<u><i>Birds</i></u>		<i>Gull-billed tern (Sterna nilotica)</i>	1 years	<i>Peregrine falcon (Falco peregrinus)</i>	1 years	<i>Wilson's plover (Charadrius wilsonia)</i>	1 years	<i>Bald eagle (Haliaeetus leucocephalus)</i>	1 years	<i>Other listed birds</i>	2 years	<u><i>Fish</i></u>		<i>All listed fish</i>	2 years	<u><i>Amphibians</i></u>		<i>All listed amphibians</i>	2 years	<u><i>Reptiles</i></u>		<i>All listed reptiles</i>	2 years	<i>All listed isopods and amphipods</i>	3 years	<i>All listed mollusks</i>	2 years	<i>All other listed invertebrates</i>	2 years	-----		<i>Prepared by DGIF; last updated: November 19, 2010</i>		<i>Sensitive Information (wildlife) and FOIA</i>		<i>It is important to note that the locations of and specific information regarding caves and certain plant and animal species are considered sensitive and may be exempt from the Virginia Freedom of Information Act. <u>See</u> Section I of this Guidance.</i>		 <i>If a proposed project will be located anywhere near a coastal area, the</i>	
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<u><i>Fish</i></u>																																													
<i>All listed fish</i>	2 years																																												
<u><i>Amphibians</i></u>																																													
<i>All listed amphibians</i>	2 years																																												
<u><i>Reptiles</i></u>																																													
<i>All listed reptiles</i>	2 years																																												
<i>All listed isopods and amphipods</i>	3 years																																												
<i>All listed mollusks</i>	2 years																																												
<i>All other listed invertebrates</i>	2 years																																												

<i>Prepared by DGIF; last updated: November 19, 2010</i>																																													
<i>Sensitive Information (wildlife) and FOIA</i>																																													
<i>It is important to note that the locations of and specific information regarding caves and certain plant and animal species are considered sensitive and may be exempt from the Virginia Freedom of Information Act. <u>See</u> Section I of this Guidance.</i>																																													
 <i>If a proposed project will be located anywhere near a coastal area, the</i>																																													

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<p>2. If the height of the tallest point of the built structures exceeds 200 feet, the applicant shall consult the "Coastal Avian Protection Zones (CAPZ)" map generated on the department's Coastal GEMS geospatial data system (9VAC15-70-120 C 1) and determine whether the proposed combustion energy project disturbance zone will be located in part or in whole within one or more CAPZ.</p> <p>B. Analyses of historic resources. To fulfill the requirements of § 10.1-1197.6 B 7 of the Code of Virginia, the applicant shall also conduct a pre-construction historic resources analysis.</p> <p>1. Desktop survey for projects with rated capacity exceeding five (5) megawatts. The applicant shall perform a desktop survey of known VLR-listed and VLR-eligible historic resources within the project's disturbance zone and within one-half (1/2) mile of the disturbance zone boundary by means of an archives search of DHR's cultural resource inventory; and report in writing the results of the archives search to the department.</p>	<p><i>applicant should consult Coastal GEMS to determine whether the project site fall in part or in whole within one or more CAPZ. See Section III – CAPZ Narrative – of this Guidance document for specific instructions.</i></p> <p><i>B. 1. For all Part II (full PBR) projects, the RAP recommended that the applicant perform a desktop archives search of known historic resources. Although most historic resources analyses must be performed by a DOI-qualified expert who can evaluate the historic qualities of the resource, this archives search may be performed by a lay person. An applicant will only have to perform the remaining historic resource analyses if the stated criteria contained in subparagraphs 2 and 3 apply to his project. The analyses prescribed in the latter subparagraphs must be performed by a DOI-qualified expert.</i></p> <p>Compilation of Known Historic Resources</p> <p><i>The Archives at the Department of Historic Resources serve as the primary repository of data on known historic resources. These data may be obtained in person at DHR's main office at 2801 Kensington Avenue, Richmond, VA, through DHR's subscription-based Data Sharing System, or by request through DHR's fee-based Archives Search Service. More information can be found on DHR's website at</i></p>

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<p>2. Architectural (direct impacts) and archaeological surveys if disturbance zone exceeds 10 acres. If the project's disturbance zone exceeds 10 acres and the project does not meet the criteria for 9VAC15-70-130 B 2 a ii, the applicant shall also meet the requirements of this subsection, and the prescribed analysis shall be conducted by a qualified professional meeting the professional qualification standards of the Secretary of the Interior's Standards for Archaeology and Historic Preservation (9VAC15-70-120 B 2) in the appropriate discipline. The analysis for this subsection shall include each of the following:</p> <p>a. Architectural survey (direct impacts). The applicant shall conduct a field survey of all architectural resources, including cultural landscapes, 50 years of age or older, within the disturbance zone and evaluate the eligibility of any identified resource for listing in the VLR.</p> <p>b. Archaeological survey. The applicant shall conduct an archaeological field survey of the disturbance zone and</p>	<p>http://www.dhr.virginia.gov/archives/archiv_info.htm. Secondary data repositories that should be checked include local planning offices and historical societies.</p> <p>Areas and properties that can be demonstrated through topographic or similar analyses to have no view to the project can be excluded from this study.</p> <p>Shelf life: The data submitted in compliance with this section should be current within one year of the submission date.</p> <p>Sensitive Information (historic resources) and FOIA</p>

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<p>evaluate the eligibility of any identified archaeological site for listing in the VLR. As an alternative to performing this archaeological survey, the applicant may make a demonstration to the department that the project will not penetrate the subsurface in a manner that would threaten archaeological resources and that any necessary grading of the site prior to construction does not have the potential to adversely impact any archaeological resource.</p> <ol style="list-style-type: none"> 2. Architectural survey (indirect impacts) if the tallest point of the built structures exceeds 200 feet. If the tallest point of the built structures exceeds 200 feet, the applicant shall also conduct a field survey of all architectural resources, including cultural landscapes, 50 years of age or older, within the one-half (1/2) mile of the disturbance zone boundary and evaluate the eligibility of any identified resource for listing in the VLR. The prescribed analysis shall be conducted by a qualified professional meeting the professional qualification standards of the Secretary of the Interior's Standards for Archeology and Historic Preservation (9VAC15-70-120 B 2) in the appropriate discipline. 3. Architectural survey (direct impacts) of structures 50 years of age or older. If the project will utilize or 	<p><i>It is important to note that the locations of and specific information regarding archaeological sites are considered sensitive and may be exempt from the Virginia Freedom of Information Act (see <u>http://www.dhr.virginia.gov/pdf_files/FOIAPolicyDHR.pdf</u> and Section I of this Guidance).</i></p> <p>Archaeological Survey</p> <p><i>All studies should be completed in accordance with the applicable DHR guidelines for conducting archaeological investigations. See GUIDELINES FOR CONDUCTING HISTORIC RESOURCES SURVEY IN VIRGINIA (October 2011), which can be found at http://www.dhr.virginia.gov/pdf_files/Survey%20Manual-RevOct.2011Final.pdf.</i></p> <p>Shelf life: <i>The data submitted in compliance with this section may be gathered at any time prior to submission.</i></p>

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<p>demolish existing buildings 50 years of age or older and the project does not meet the criteria for 9VAC15-70-130 B 2 c ii, the applicant shall evaluate the eligibility of any such buildings for listing in the VLR. The prescribed analysis shall be conducted by a qualified professional meeting the professional qualification standards of the Secretary of the Interior's Standards for Archaeology and Historic Preservation (9VAC15-70-120 B 2) in the appropriate discipline.</p> <p>C. Analyses of other natural resources. To fulfill the requirements of § 10.1-1197.6 B 7 of the Code of Virginia, and if the project's disturbance zone exceeds 10 acres, the applicant shall also conduct a pre-construction desktop survey of natural heritage resources within the disturbance zone.</p>	<p>Natural Heritage Resources</p> <p><i>The definition of "natural heritage resources" is pursuant to §10.1-209 of the Code of Virginia. Current lists of natural heritage resources can be found on DCR's web site at http://www.dcr.virginia.gov/natural_heritage/infoservices.shtml#lists.</i></p> <p><i>Ecological Community Group definitions and descriptions, along with methods, can be found on the Department of Conservation and Recreation's website at: http://www.dcr.virginia.gov/natural_heritage/nchome.shtml.</i></p> <p><i>A list of natural heritage resource animal and plant species can be found at https://vanhde.org.</i></p> <p><i>For desktop surveys, natural heritage resource and state threatened and endangered species information can be found by contacting the Department of Conservation and Recreation, Natural Heritage Program at 804-371-2708, or directly on-line at Natural Heritage Data Explorer https://vanhde.org via a data subscription agreement: http://www.dcr.virginia.gov/forms/DCR199-005.pdf.</i></p> <p><i>A list of invasive plant species is found at</i></p>

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<p>D. Summary report. The applicant shall provide to the department a report presenting the findings of the applicable studies and analyses conducted pursuant to subdivisions A, B, and C of this subsection, along with all data and supporting documents. The applicant shall assess and describe the expected beneficial and adverse impacts, if any, of the proposed project on wildlife and historic resources identified by these studies and analyses.</p> <p>50. Determination of likely significant adverse impacts.</p> <p>A. The department shall find that significant adverse impacts to wildlife are likely whenever the wildlife analyses prescribed in 9VAC15-70-40 A document that any of the following conditions exists:</p>	<p>http://www.dcr.virginia.gov/natural_heritage/documents/invlist.pdf.</p> <p><i>For natural heritage resources, the applicant is encouraged to take all reasonable measures to avoid adverse impacts. Where impacts are identified, the applicant is encouraged to take action to mitigate or reduce such impacts or to explain why such impacts could not be avoided. Where appropriate, DEQ may approve mitigation of likely significant adverse impacts on natural heritage resources as part of a required wildlife mitigation plan.</i></p>

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<p>1. State-listed T&E wildlife are found to occur within the disturbance zone;</p> <p>2. The disturbance zone is located on or within one-half (1/2) mile of a known or potential sea turtle nesting beach;</p> <p>3. The disturbance zone is located in part or in whole within zones 1, 2, 3, 4, 5, 10, 11, 12, or 14 on the Coastal Avian Protection Zones (CAPZ) map and the height of the tallest point of the built structures exceeds 200 feet.</p> <p>B. The department shall find that significant adverse impacts to historic resources are likely whenever the historic resources analyses prescribed by 9VAC15-70-40 B indicate that the proposed project is likely to diminish significantly any aspect of a historic resource's integrity.</p>	<p><i>3. Background: The location of the proposed combustion project within one of the specified CAPZ areas was judged by the Combustion RAP to constitute a likelihood of significant adverse impacts to the important avian resources within these critical geographic areas, if the project's stack (highest point of the built structures) exceeds 200 feet. The specified zones are the ones in which scientists have already researched and established the highly significant nature and extent of avian resources.</i></p> <p><i>Significant adverse impacts are such that the project will alter, directly or indirectly, any of the characteristics of an historic resource in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Definitions of these aspects of integrity can be found at 17 VAC 5-30-50.</i></p>
<p>60. Mitigation plan.</p> <p>A. If the department determines that significant adverse impacts to wildlife or historic resources or both are likely, then</p>	

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<p>the applicant shall prepare a mitigation plan. The mitigation plan shall include a description of the affected wildlife or historic resources, or both, and the impact to be mitigated; a description of actions that will be taken to avoid the stated impact; and a plan for implementation. If the impact cannot reasonably be avoided, the plan shall include a description of actions that will be taken to minimize the stated impact and a plan for implementation. If neither avoidance nor minimization is reasonably practicable, the plan shall include a description of other measures that may be taken to offset the stated impact; and a plan for implementation.</p> <p>B. Mitigation measures for significant adverse impacts to wildlife shall include:</p> <ol style="list-style-type: none"> 1. For state-listed T&E wildlife, the applicant shall take all reasonable measures to avoid significant adverse impacts, or shall demonstrate in the mitigation plan what significant adverse impacts cannot practicably be avoided and why additional proposed actions are reasonable. These additional proposed actions may include best practices to avoid, minimize, or offset adverse impacts to resources analyzed pursuant to 9VAC15-70-40 A or 9VAC15-70-40 C. 2. For proposed projects where the disturbance zone is located on or within one-half (½) mile of a known or potential sea turtle nesting beach, the applicant shall take all reasonable measures to avoid significant adverse impacts or shall demonstrate in the mitigation plan what significant adverse impacts cannot practicably be avoided, and why additional proposed mitigation actions are reasonable. Mitigation measures 	<p><i>This regulation does not mandate a mitigation plan for impacts to SGCN or to natural heritage resources, since they do not fall within the definition of “wildlife.” The applicant is required, however, to perform pre-construction surveys and analyses for both (see 9VAC15-70-40 A & C). This provision makes clear that the applicant may voluntarily opt to propose best practices to mitigate for Tier 1 & 2 SGCN, natural heritage resources, or any other resource analyzed pursuant to 9VAC15-70-40 A or C, when he cannot fully avoid impacts to T&E species <u>per se</u>.</i></p>

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<p>shall include the following:</p> <ul style="list-style-type: none"> a. Avoiding construction within likely sea turtle crawl or nesting habitats during the turtle nesting and hatching season (May 20 - October 31). If avoiding construction during this period is not possible, then conducting daily crawl surveys of the disturbance zone (May 20 - August 31) and one (1) mile beyond the northern and southern reaches of the disturbance zone (hereinafter "sea turtle nest survey zone") between sunrise and 9:00 a.m. by qualified individuals who have the ability to distinguish accurately between nesting and non-nesting emergences. b. If construction is scheduled during the nesting season, then including measures to protect nests and hatchlings found within the sea turtle nest survey zone. c. Minimizing nighttime construction during the nesting season, and designing project lighting during the construction and operational phases to minimize impacts on nesting sea turtles and hatchlings. <p>4. For projects located in part or in whole within zones 1, 2, 3, 4, 5, 10, 11, 12, or 14 on the Coastal Avian Protection Zones (CAPZ) map for which the tallest point of the built structures exceeds 200 feet, contribute \$1,000.00 per megawatt of rated capacity, or partial megawatt thereof, to a fund</p>	<p>CAPZ Avian Mitigation Measures</p> <p><i>See Section III – CAPZ Narrative – of this Guidance document for details.</i></p> <p><i>Payment of contributions toward research should be addressed as follows:</i></p> <p><i>Department of Environmental Quality</i></p> <p><i>Receipts Control</i></p>

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<p>designated by the department in support of scientific research investigating the impacts of projects in CAPZ on avian resources.</p> <p>C. Mitigation measures for significant adverse impacts to historic resources shall include:</p> <ol style="list-style-type: none"> 1. Significant adverse impacts to VLR-eligible or VLR-listed architectural resources shall be minimized, to the extent practicable, through design of the combustion energy project or the installation of vegetative or other screening. 2. If significant adverse impacts to VLR-eligible or VLR-listed architectural resources cannot be avoided or minimized such that impacts are no longer significantly adverse, then the applicant shall develop a reasonable and proportionate mitigation plan that offsets the significantly adverse impacts and has a demonstrable public benefit and benefit for the affected or similar resource. 3. If any identified VLR-eligible or VLR-listed archaeological site cannot be avoided or minimized to such a degree as to avoid a significant adverse impact, significant adverse impacts of the project will be mitigated through archaeological data recovery. 	<p><i>P. O. Box 1104 Richmond, Virginia 23218</i></p> <p><i>Applicants should check with DEQ staff regarding the appropriate project/fund coding that should be entered on their checks to ensure proper crediting of payments.</i></p> <p><i>If the owner of the affected historic property agrees to screening, a landscape plan should be prepared and submitted. This plan should include a graphic representation of the effectiveness of the screening. The applicant should implement the approved landscape plan and accept responsibility for the survival of any plantings for one year after planting. Documentation of the completion and assessment of the efficacy of the screening should be submitted.</i></p> <p><i>A schedule for mitigation implementation should be included in the application.</i></p> <p><i>Any necessary data recovery plan should include: (a) the property, properties, or portions of properties where site specific data recovery plans will be carried out; (b) the portion(s) of the site to be preserved in place, if any, as well as the measures to be taken to ensure continued preservation; (c) research questions to be addressed through data recovery with an explanation of their relevance and importance; (d) methods to be used with an explanation of their relevance to the</i></p>

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	<p><i>research questions; (e) methods to be used in analysis, data management, and dissemination of data, including a schedule; (f) proposed disposition of recovered materials and records; (g) proposed methods of disseminating the results of the work to the interested public; and (h) a schedule for the submission of progress reports to DEQ.</i></p>

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<p>70. Site plan and context map requirements.</p> <p>A. The applicant shall submit a site plan that includes maps showing the physical features, topography and land cover of the area within the site, both before and after construction of the proposed project. The site plan shall be submitted at a scale sufficient to show, and shall include, the following: (i) the boundaries of the site; (ii) the location, height, and approximate dimensions of all existing and proposed infrastructure; (iii) the location, grades, and dimensions of all temporary and permanent on-site and access roads from the nearest county or state maintained road; and (iv) water bodies, waterways, wetlands, and drainage channels.</p> <p>B. If the project’s disturbance zone exceeds 10 acres, the applicant shall submit a context map including the area encompassed by the site and within two miles of the site boundary. The context map shall show known state and federal resource lands and other protected areas, Coastal Avian Protection Zones, state roads, waterways, locality boundaries, forests, and open spaces.</p>	<p><i>Site Plan: It is recommended that the site plan include the following:</i></p> <ol style="list-style-type: none"> <i>1. Property lines and setback lines.</i> <i>2. Existing and proposed buildings and structures, including preliminary location(s) of the proposed combustion equipment.</i> <i>3. Existing and proposed access roads, drives, turnout locations, and parking.</i> <i>4. Location of substations, electrical cabling from the combustion systems to the substations, ancillary equipment, buildings, and structures (including those within any applicable setbacks), if applicable.</i> <p><i>Background: Of special note is the inclusion of “forests” and “open spaces” as required aspects of the context map. Although the RAP agreed that the regulatory reach of the proposed regulation does not extend to forest or farm management, the manner in which fuel for combustion energy projects may be supplied by farms and forests is of significant societal importance. The Department of Forestry representative pointed out that the issue of forest fragmentation is important, and possible forest fragmentation may be reflected on the context map. It can be taken into account by the public and local government, among others. The use of farm land to grow biomass crops was of special interest to the representative from VDACS.</i></p>
<p>80. Small combustion energy project design standards.</p>	

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<p>The design and installation of the combustion energy project shall incorporate any requirements of the mitigation plan that pertain to design and installation, if a mitigation plan is required pursuant to 9VAC15-70-50.</p>	
<p>90. Public participation.</p> <p>A. Before the initiation of any construction at the combustion energy project, the applicant shall comply with this section. The owner or operator shall first publish a notice once a week for two consecutive weeks in a major local newspaper of general circulation informing the public that he intends to construct and operate a project eligible for a permit by rule. No later than the date of newspaper publication of the initial notice, the owner or operator shall submit to the department a copy of the notice along with electronic copies of all documents that the applicant plans to submit in support of the application. The notice shall include:</p> <ol style="list-style-type: none"> 1. A brief description of the proposed project and its location, including the approximate dimensions of the site, approximate number and configuration of systems, and approximate maximum height of systems; 2. A statement that the purpose of the public participation is to acquaint the public with the technical aspects of the proposed project and how the standards and the requirements of this chapter will be 	

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<p>met, to identify issues of concern, to facilitate communication, and to establish a dialogue between the owner or operator and persons who may be affected by the project;</p> <p>3. Announcement of a 30-day comment period in accordance with subsection C of this section, and the name, telephone number, address, and email address of the applicant who can be contacted by the interested persons to answer questions or to whom comments shall be sent;</p> <p>4. Announcement of the date, time, and place for a public meeting held in accordance with subsection D of this section; and</p> <p>5. Location where copies of the documentation to be submitted to the department in support of the permit by rule application will be available for inspection.</p> <p>B. The owner or operator shall place a copy of the documentation in a location accessible to the public during business hours for the duration of the 30-day comment period in the vicinity of the proposed project.</p> <p>C. The public shall be provided at least 30 days to comment on the technical and the regulatory aspects of the proposal. The comment period shall begin no sooner than 15 days after the applicant initially publishes the notice in the local newspaper.</p> <p>D The applicant shall hold a public meeting not earlier than 15 days after the beginning of the 30-day public</p>	

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<p>comment period and no later than seven days before the close of the 30-day comment period. The meeting shall be held in the locality or, if the project is located in more than one locality, in a place proximate to the location of the proposed project.</p> <p>E. For purposes of this chapter, the applicant and any interested party who submits written comments on the proposal to the applicant during the public comment period or who signs in and provides oral comments at the public meeting shall be deemed to have participated in the proceeding for a permit by rule under this chapter and pursuant to § 10.1-1197.7 B of the Code of Virginia.</p>	
<p>100. Change of ownership, project modifications, termination.</p> <p>A. Change of ownership. A permit by rule may be transferred to a new owner or operator if:</p> <ol style="list-style-type: none"> 1. The department receives notification of the change of ownership within 30 days of the transfer; and 2. The notice includes written agreement by the new owner or operator to comply with all requirements of the existing permit by rule and the date on which permit responsibility is transferred to the new owner or operator. 	

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<p>B. Project modifications. Projects subject to Part II of this chapter may be modified as follows:</p> <ol style="list-style-type: none"> 1. Project modifications that do not increase the project's disturbance zone by more than an additional 10 acres, cause the tallest point of the built structures to exceed 200 feet, or newly involve utilizing or demolishing a building over 50 years of age may occur without notice to the Department. No fee will be levied for these modifications. 2. If, however, the project modification involves increasing the disturbance zone by more than 10 additional acres increasing the height of the tallest point of the built structures so that it now exceeds 200 feet, or newly utilizing or demolishing a building over 50 years of age, the owner or operator shall furnish to the department new certificates prepared by a professional engineer, new documentation required under 9VAC15-70-30, and the appropriate fee in accordance with 9VAC15-70-110. The department shall review the received modification submittal pursuant to this subparagraph in accordance with the provisions of subsection B of 9VAC15-70-30. <p>C. Permit by rule termination. The department may terminate the permit by rule whenever the department finds that:</p> <ol style="list-style-type: none"> 1. The applicant has knowingly or willfully misrepresented or failed to disclose a material fact in any report or certification required under this chapter; or 2. After the department has taken enforcement actions pursuant to 9VAC15-70-140, the owner or operator persistently operates the project in significant violation 	<p><i>Background: B 1 & 2. RAP members recognized that modification of a project's rated capacity is unlikely to warrant a new regulatory review; however, a significant change in disturbed area, stack height, or age of newly disturbed buildings might do so.</i></p>

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<p>of the project's mitigation plan.</p> <p>Prior to terminating a permit by rule pursuant to subdivision 1 or 2 of this subsection, the department shall hold an informal fact-finding proceeding pursuant to § 2.2-4019 of the Virginia Administrative Process Act in order to assess whether to continue with termination of the permit by rule or to issue any other appropriate order. If the department determines that it should continue with the termination of the permit by rule, the department shall hold a formal hearing pursuant to § 2.2-4020 of the Virginia Administrative Process Act. Notice of the formal hearing shall be delivered to the owner or operator. Any owner or operator whose permit by rule is terminated by the department shall cease operating his combustion energy project.</p>	

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<p>110. Fees for projects subject to Part II of this chapter.</p> <p>A. Purpose. The purpose of this section is to establish schedules and procedures pertaining to the payment and collection of fees from any applicant seeking a new permit by rule or a modification to an existing permit by rule for a combustion energy project subject to Part II (9VAC15-70-30 et seq.) of this chapter.</p> <p>B. Permit fee payment and deposit. Fees for permit by rule applications or modifications shall be paid by the applicant as follows:</p> <ol style="list-style-type: none"> 1. Due date. All permit application fees or modification fees are due on submittal day of the application or modification package. 2. Method of payment. Fees shall be paid by check, draft, or postal money order made payable to "Treasurer of Virginia/DEQ" and shall be sent to the Department of Environmental Quality, Receipts Control, P.O. Box 1104, Richmond, VA 23218. 3. Incomplete payments. All incomplete payments shall be deemed nonpayments. 4. Late payment. No application or modification submittal will be deemed complete until the department receives proper payment. <p>C. Fee schedules. Each application for a permit by rule</p>	<p><i>Only projects governed by Part II ("full PBR") are required to pay a fee. Projects governed by Part III (Section 130 "de minimis" projects) are not subject to a permit fee.</i></p> <p><i>Applicants should check with DEQ Renewable Energy staff regarding the appropriate project/fund coding that should be entered on their check to ensure proper crediting of payments.</i></p>

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<p>and each application for a modification of a permit by rule is a separate action and shall be assessed a separate fee, except as noted in 9VAC15-70-100 B 1. The amount of the permit application fee is based on the costs associated with the permitting program required by this chapter. The fee schedules are shown in the following table:</p> <table data-bbox="163 495 861 597"> <thead> <tr> <th>Type of Action</th> <th>Fee</th> </tr> </thead> <tbody> <tr> <td>Permit by rule application</td> <td>\$8000</td> </tr> <tr> <td>Permit by rule modification</td> <td>\$4000</td> </tr> </tbody> </table> <p>D. Use of fees. Fees are assessed for the purpose of defraying the department's costs of administering and enforcing the provisions of this chapter including, but not limited to, permit by rule processing, permit by rule modification processing, and inspection and monitoring of combustion energy projects to ensure compliance with this chapter. Fees collected pursuant to this section shall be used for the administrative and enforcement purposes specified in this section and in § 10.1-1197.6 E of the Code of Virginia.</p> <p>E. Fund. The fees, received by the department in accordance with this chapter, shall be deposited in the Small Renewable Energy Project Fee Fund.</p> <p>F. Periodic review of fees. Beginning July 1, 2014, and periodically thereafter, the department shall review the schedule of fees established pursuant to this section to ensure that the total fees collected are sufficient to cover 100% of the department's direct costs associated with use of the fees.</p>	Type of Action	Fee	Permit by rule application	\$8000	Permit by rule modification	\$4000	
Type of Action	Fee						
Permit by rule application	\$8000						
Permit by rule modification	\$4000						

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<p>120. Internet accessible resources.</p> <p>A. This chapter refers to resources to be used by applicants in gathering information to be submitted to the department. These resources are available through the Internet; therefore, in order to assist applicants, the uniform resource locator or Internet address is provided for each of the references listed in this section.</p> <p>B. Internet available resources.</p> <ol style="list-style-type: none"> 1. The Virginia Landmarks Register, Virginia Department of Historic Resources, 2801 Kensington Avenue, Richmond, Virginia. Available at the following Internet address: http://www.dhr.virginia.gov/registers/register.htm. 2. Professional Qualifications Standards, the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, as amended and annotated (48 FR 44716-740, September 29, 1983), National Parks Service, Washington, DC. Available at the following Internet address: http://www.nps.gov/history/local-law/arch_stnds_9.htm. 3. The Natural Communities of Virginia, Classification of Ecological Community Groups, Virginia Department of Conservation and Recreation, Division of Natural Heritage, Richmond, VA. Available at the following Internet address: http://www.dcr.virginia.gov/natural_heritage/ncintro.shtml. 4. Virginia's Comprehensive Wildlife Conservation 	

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<p>Strategy, 2005 (referred to as the Virginia Wildlife Action Plan) , Virginia Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia. Available at the following Internet address: http://www.bewildvirginia.org/wildlifeplan/.</p> <p>C. Internet applications.</p> <p>1. Coastal GEMS application, 2010, Virginia Department of Environmental Quality. Available at the following Internet address: http://www.deq.virginia.gov/Programs/CoastalZoneManagement/CoastalGEMSGeospatialData.aspx.</p> <p>NOTE: This website is maintained by the department. Assistance and information may be obtained by contacting Virginia Coastal Zone Management Program, Virginia Department of Environmental Quality, 629 E. Main Street, Richmond, Virginia 23219, (804) 698-4000.</p> <p>2. Natural Landscape Assessment, Virginia Department of Conservation and Recreation. Available at the following Internet address: for detailed information on ecological cores go to http://www.dcr.virginia.gov/natural_heritage/vclnavnla.shtm. Land maps may be viewed at DCR's Land Conservation Data Explorer Geographic Information System website at http://www.vaconservedlands.org/gis.aspx.</p> <p>NOTE: The website is maintained by DCR. Actual shapefiles and metadata are available for free by contacting a DCR staff person at vaconslands@dcr.virginia.gov or DCR, Division of Natural Heritage, 217 Governor Street, Richmond,</p>	

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<p>Virginia 23219, (804) 786-7951.</p> <p>3. Virginia Fish and Wildlife Information Service 2010, Virginia Department of Game and Inland Fisheries. Available at the following Internet address: http://www.vafwis.org/fwis/.</p> <p>NOTE: This website is maintained by DGIF and is accessible to the public as "visitors," or to registered subscribers. Registration, however, is required for access to resource-specific or species-specific locational data and records. Assistance and information may be obtained by contacting DGIF, Fish and Wildlife Information Service, 4010 West Broad Street, Richmond, Virginia 23230, (804) 367-6913.</p>	
<p>130. Provisions for Projects Less Than or Equal to Five Megawatts or Meeting Other Specified Criteria</p> <p>A. The owner or operator of a combustion energy project is not required to submit any notification or certification to the department if the combustion energy project has a rated capacity equal to or less than 500 kilowatts.</p> <p>B. The owner or operator of a combustion energy project shall notify the department and shall submit a certification by the</p>	<p><i>PART III “DE MINIMIS” PROJECTS (SECTION 130)</i></p> <p><i>Projects that qualify under Section 130 are sometimes referred to as “de minimis” projects, because they generally have little impact on natural resources. They are deemed to be covered by the Combustion PBR, but the regulatory requirements are significantly less than those for projects that are covered by Section 30 et seq. The latter projects must comply with the “full PBR” regulation as set forth in the regulatory sections <u>other than</u> Section 130.</i></p> <p><i>A. Projects with rated capacity $\leq 500kW$ are totally exempt from DEQ scrutiny.</i></p> <p><i>B. Both notice to DEQ and submission to DEQ of local government</i></p>

REGULATION	GUIDANCE
<p>governing body of the locality or localities wherein the project will be located that the project complies with all applicable land use ordinances, if the project meets either of the following criteria:</p> <ol style="list-style-type: none"> 1. The combustion energy project has a rated capacity greater than 500 kilowatts and less than or equal to five (5) megawatts; or 2. The combustion energy project has a rated capacity greater than five (5) megawatts and meets all of the criteria specified below. <ol style="list-style-type: none"> a. The combustion energy project has a disturbance zone <ol style="list-style-type: none"> (i) less than or equal to ten (10) acres; or (ii) greater than 10 acres but utilizes existing parking lots, existing roads, or other previously disturbed areas and any impacts to undisturbed areas do not exceed an additional ten acres; b. The tallest point of the built structures does not exceed 200 feet; and c. If utilizing or demolishing existing buildings, utilizes or demolishes existing buildings <ol style="list-style-type: none"> (i) less than 50 years of age; or (ii) 50 years of age or older that have been evaluated and determined by DHR within the preceding seven (7) years to be not VLR-eligible. 	<p><i>certification of compliance with land use ordinances are required. To qualify for coverage under Section 130 B, the project must have a rated capacity >500kW and ≤5 MW OR meet all three criteria listed in 130 B 2 (i.e., a, b, and c). Note that there are alternate means of meeting the criteria for a and c.</i></p> <p><i>For notice to DEQ, please refer to the attached Sample Notice of Intent (Section 130 Projects). The agency's preference is that this notification be provided by electronic mail to mary.major@deq.virginia.gov.</i></p> <p><i>For local government certification, please use the attached Local Government Certification form, which may also be submitted by electronic mail to mary.major@deq.virginia.gov.</i></p> <p><i>NOTE: It was further recommended by the Combustion RAP that applicants whose proposed projects are addressed by Section 130.B of either the wind, solar or combustion PBR should perform a basic desktop "fatal flaw" analysis and voluntarily discuss the results with relevant state agencies.</i></p> <p><i>Applicants are urged to confer with DGIF staff, especially with regard to compliance with the Virginia Endangered Species Act, if T&E species are found to occur within the disturbance zone or the disturbance zone is located on or within ½ mile of a known or potential sea turtle nesting beach.</i></p>

REGULATION	GUIDANCE
<p>140. Enforcement.</p> <p>The department may enforce the provisions of this chapter and any permits by rule authorized under this chapter in accordance with §§ 10.1-1197.9, 10.1-1197.10, and 10.1-1197.11 of the Code of Virginia. In so doing, the department may:</p> <ol style="list-style-type: none"> 1. Issue directives in accordance with the law; 2. Issue special orders in accordance with the law; 3. Issue emergency special orders in accordance with the law; 4. Seek injunction, mandamus or other appropriate remedy as authorized by the law; 5. Seek civil penalties under the law; or 6. Seek remedies under the law, or under other laws including the common law. 	

(Agency Notice for Combustion Energy Project—“de minimis” Section 130 B projects)

COMPANY LETTERHEAD

[Date]

Ms. Mary E. Major
Renewable Energy Policy Manager
Department of Environmental Quality
P. O. Box 1105
Richmond, VA 23218
mary.major@deq.virginia.gov

Dear Ms. Major:

On behalf of **[company/applicant]**, I am hereby providing notice to the Department of Environmental Quality of our intention to construct a small renewable energy project (combustion) in **[city/county]**, Virginia, pursuant to Virginia Regulation 9VAC15-70-130.B. This project will be subject to provision 9VAC15-70-130.B because **[the rated capacity of the project will be a number equaling 5 megawatts or less OR the project meets exceeds a rated capacity of 5 megawatts but meets other criteria specified in the regulation]**.

[Applicant should provide a brief description of the proposed project and its location - including geographic coordinates, the approximate dimensions of the site, description of the boilers, fuel, fuel delivery system (as they are applicable), and any other key characteristics. If the applicant is claiming coverage under 9VAC15-70-130.B because the project meets specified criteria other than rated capacity, then applicant should provide a full explanation in this paragraph of how the project meets these specified criteria.]

Attached to this letter, please find a certification by **[governing body of the locality or localities wherein the project will be located]** that the project complies with all applicable land use ordinances. **[If local government certification is not applicable (for instance, if the facility is located on federally-owned property), then the applicant should explain this fact.]**

If the Department has questions regarding this project, please contact **[name]** at **[email address and telephone number]**.

Sincerely yours,

[name]
[title]

[Note: Brackets indicate where applicant should provide project-specific information.]

(Notice of Intent for Combustion Energy Project – full PBR projects)

COMPANY LETTERHEAD

[Date]

Ms. Mary E. Major
Renewable Energy Policy Manager
Department of Environmental Quality
P. O. Box 1105
629 East Main Street
Richmond, VA 23218
mary.major@deq.virginia.gov

Dear Ms. Major:

On behalf of **[company/applicant]**, I am hereby providing notice to the Department of Environmental Quality of our intention to submit the necessary documentation for a permit by rule for a small renewable energy project (combustion) in **[city/county]**, Virginia, pursuant to Virginia Regulation 9VAC15-70.

[Applicant should provide a brief description of the proposed project and its location- including geographic coordinates, the approximate dimensions of the site, description of the boilers, fuel, fuel delivery system (as they are applicable), and any other key characteristics. Projects in this category should have rated capacity > 5 MW and ≤ 20 MW.]

If the Department has questions regarding this project, please contact **[name]** at **[email address and telephone]**.

Sincerely yours,

[name]
[title]

[Note: Brackets indicate where applicant should provide project-specific information.]

**Virginia Department of Environmental Quality
Small Renewable Energy Projects (Combustion)
Local Governing Body Certification Form**

Facility Name and Location:

Applicant's Name:

Applicant's Mailing Address:

Telephone Number and Email Address:

The applicant or his representative is submitting an application for a small renewable energy permit by rule from the Virginia Department of Environmental Quality. In accordance with § 10.1 - 1197.6 B 2 of the Code of Virginia, before such permit application can be considered complete, the applicant must obtain a certification from the governing body of the locality or localities in which the small renewable energy project will be located that the project complies with all applicable land use ordinances.

The undersigned requests that an authorized representative of the local governing body sign the certification statement below. In addition, by signing below, the applicant affirms that he has also submitted this form to other localities, if any, in which the proposed project will be located.

Applicant's signature:

Date:

The undersigned local government representative certifies that the proposed small renewable energy project complies with all applicable land use ordinances, as follows:

(Check one block)

The proposed facility **complies with** all applicable land use ordinances.

The proposed facility **does not comply** with all applicable land use ordinances.

Signature of authorized local government representative:

Date:

Type or print name:

Title:

County, City or Town:

**Virginia Department of Environmental Quality
Small Renewable Energy Projects (Combustion)
Environmental Permit Certification Form**

Facility Name and Location:

Applicant's Name & Title:

Applicant's Mailing Address:

Telephone Number and Email Address:

The applicant is submitting an application for a small renewable energy permit by rule from the Virginia DEQ. In accordance with § 10.1-1197.6 B 12 of the Code of Virginia, before such permit application can be considered complete, the applicant must certify that the small renewable energy project has applied for or obtained all necessary environmental permits.

List all state and local environmental permits that are necessary for the small renewable energy project listed above. Indicate for each whether the permit has been applied for and/or obtained. If the permit has been obtained, attach either a copy of the permit or a letter from the appropriate agency staff member on agency stationery stating that the permit has been issued and the date of issuance. If a permit has not yet been obtained but has been applied for, provide the name of the permit, name and address of the receiving agency, name of the staff person at the receiving agency to whom the application was addressed (if available), and the date on which the application was submitted. If no permits are necessary, write the word "none" in the first column.

Permit	Permitting Agency / Authority, Address, Contact Person	Applied for (Date)	Obtained (Date)

I hereby certify that the information provided above (and any attached information) is correct and fulfills the requirements of § 10.1-1197.6 B 12 of the Code of Virginia and 9 VAC 15-40-30 A 12.

Applicant's Signature

Date:

**Virginia Department of Environmental Quality
Small Renewable Energy Projects
Non-Utility Certification Form**

Facility Name and Location:

Applicant's Name:

Applicant's Mailing Address:

Telephone Number and Email Address:

The applicant or his authorized representative an application for a small renewable energy permit by rule from the Virginia Department of Environmental Quality. In accordance with § 10.1 -1197.6 H of the Code of Virginia, before such permit application can be considered complete, the applicant must certify the project is proposed, developed, constructed or purchase by a person that is NOT a utility regulated pursuant to Title 56 of the Code of Virginia.

The undersigned is an responsible official for the proposed project and certifies that the project is proposed, developed, constructed or purchased by a person that is NOT a utility regulated pursuant to Title 56 of the Code of Virginia.

Applicant's signature:

Date:

**Virginia Department of Environmental Quality
Small Renewable Energy Projects
Utility Certification Form**

Facility Name and Location:

Applicant's Name:

Applicant's Mailing Address:

Telephone Number and Email Address:

The applicant or his authorized representative is submitting an application for a small renewable energy permit by rule from the Virginia Department of Environmental Quality. In accordance with § 10.1 -1197.6 I 1 and 2 of the Code of Virginia, before such permit application can be considered complete, the applicant must certify that the project is proposed, developed, constructed or purchased by either a public utility which meets specific criteria or a utility aggregation cooperative.

The undersigned is a responsible official for the proposed project and certifies that the project is proposed, developed, constructed or purchased by:

(Check one block)

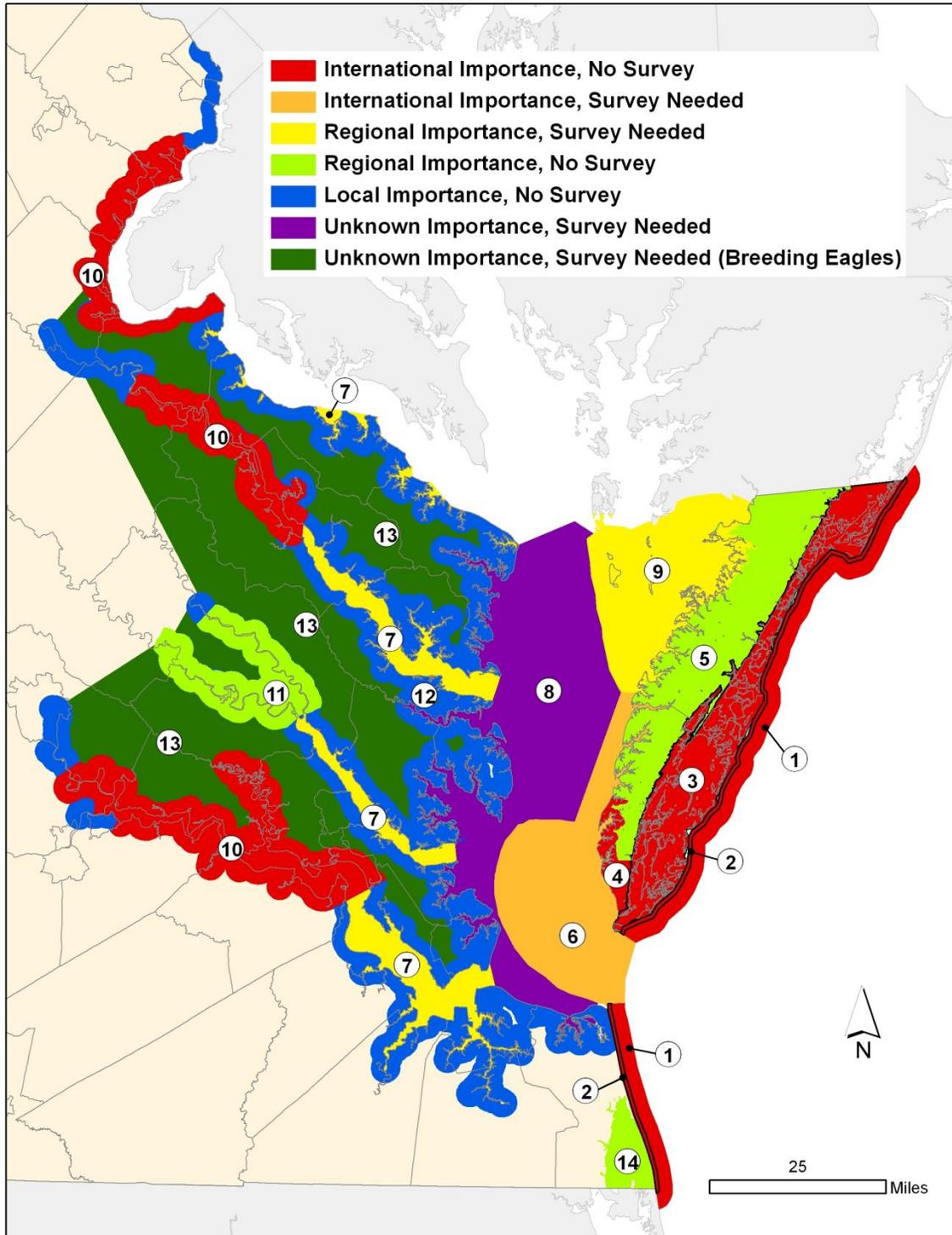
A public utility; the project's costs are not recovered from Virginia jurisdictional customers under base rates, a fuel factor charge under § 56-249.6, or a rate adjustment clause under subdivision A 6 of § 56-585.1.

A utility aggregation cooperative formed under Article 2 (§ 56-231.38 et seq.) of Chapter 9.1 of Title 56.

Applicant's Signature:

Date:

Coastal Avian Protection Zones (CAPZ) Map



(PDF Version – 9/2/2011)